

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

James R. Eubanks,)	
)	
Petitioner,)	Civil Action No. 8:16-2634-TMC
)	
vs.)	ORDER
)	
Warden Scott Lewis,)	
)	
Respondent.)	
)	

Petitioner James R. Eubanks, a state prisoner proceeding pro se, filed this habeas action pursuant to 28 U.S.C. § 2254. In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02, D.S.C., this matter was referred to a magistrate judge for pretrial handling. Before the court is the magistrate judge's Report and Recommendation ("Report"), recommending that the action be dismissed with prejudice for failure to prosecute. (ECF No. 23). The parties were advised of their right to file objections to the Report. (ECF No. 23-1). However, neither party filed any objections to the Report, and the time to do has now run. The Report mailed to Petitioner's last known address was returned as undeliverable and marked, "Released/Death 2/9/17."

The Report has no presumptive weight and the responsibility to make a final determination in this matter remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). In the absence of objections, this court is not required to provide an explanation for adopting the Report. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to

accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

After a thorough review of the record in this case, the court adopts the Report (ECF No. 23) and incorporates it herein. Accordingly, this action is **DISMISSED** with prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b) and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982). *See Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989). Respondent’s motion for summary judgment (ECF No. 15) is **DENIED as moot**.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

March 10, 2017
Anderson, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.